the action was in fact, discontinued. This case, therefore, is very different from the two Court of Appeal decisions relied upon by the plaintiffs as there was no suggestion in either of those cases that the original action had been discontinued pursuant to the terms of the compromise. It follows in my opinion that the defendants have failed to rebut the weight of authority relied upon by the plaintiffs in support of the procedure they have adopted in this case. The principle was stated with clarity and emphasis by Vice-Chancellor Malins in *Scully v. Dundonald*[5], *supra*, in these words: "Wherever parties enter into an agreement to compromise a suit pending before me I shall consider it pure matter of course that an order shall be made in that suit to enforce the compromise." I respectfully adopt that statement of the law as applicable to the facts of this case and hold that the plaintiffs can, as pure matter of course, obtain an order in this suit for $5,379.21. It follows that the plaintiffs are entitled to the costs of this motion and there will be judgment accordingly.

Judgment for the plaintiffs.

Solicitors: *Rodyk & Davidson; Donaldson & Burkinshaw.*

P. R. PANICKAR v. CHWEE MAY KWONG & ANOR.

[C. A. (Whyatt C.J., Thomson C.J. (F.M.) and Knight J.) February 8, 1957]

[Singapore — Civil Appeal No. 26 of 1956]

Damages — Negligence — Fatal accident — Loss of expectation of life — Principle to be followed in assessing damages to family of deceased — Civil Law Ordinance (Cap. 24), ss. 7 & 12.

In assessing damages to the family of a person for loss occasioned by his death under section 12 of the Civil Law Ordinance (Cap. 24) the starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.

[Editorial Note: In Lim Joo Chiang v. Lim Siew Choo & Anor., (1953) M.L.J. 231 the Court of appeal held that it was convenient in cases of claims for loss of expectation of life if the basis of calculating awards under section 8 of the Civil Law Ordinance (now section 12 of Cap. 24) were fully set out and the award to each dependant calculated separately. This was affirmed by the Privy Council in (1955) M.L.J. 201 when the case went before the Judicial Committee on Appeal. See also Liew Soon Oi v. Yap Fui Thong & Anor., (1956) M.L.J. 181. In assessing damages and following the principle as to quantum of damages as laid down in Benham v. Gambling, (1941) A.C. 157, it should be borne in mind that the value of money has fallen very much since that case was decided. See Seow Seng Choon v. Yam Kim Chye & Anor., (1952) M.L.J. 244, C.A. and Tham Kwa Chin v. Choong Hoong Sum, (1954) M.L.J. 161.]

Case referred to:—

(1) *Davies & Anor. v. Powell Duffryn Associated Collieries Ltd.*, (1942) A.C. 602.

DAMAGES.

J. L. P. Harris for the appellant.

N. A. Christopher for the respondents.

Whyatt C.J.: — The judgment I am about to read is the judgment of Knight J., and myself. The appellant appeals to this Court from a judgment of the learned trial Judge in which he was found to have been 80% to blame for an accident which occurred on the highway at about 8.15 p.m. on 20th August 1954 between a motor car, which the appellant was driving, and a bicycle which was being ridden by one Thong Ah Woh. Mr. Thong died as a result of injuries he received in the accident and the learned trial Judge found that he too had been guilty of negligence, which was assessed at 20% — a decision from which the respondents (as Administratrix and Co-Administratrix of the estate of Thong Ah Woh, deceased) cross appeal. The appellant also appeals against the award of $35,672 damages which was assessed on the basis of the parties being responsible for the accident in the proportion of 80% to 20%.

The accident took place in Upper Aljunied Road on a dark night, though the road was partly illuminated by some electric lights which were burning in the Depot of the old Singapore Traction Company. It is common ground that the bicycle and the motor car were proceeding in the same direction and that after the collision the lamp of the cycle was found lying a distance of 6 feet 6 inches from the left hand side of the road whilst the cycle itself was lying with its nearest point some 5 feet 5 inches from the same verge. The road was dry at the time of the accident; the brakes of the appellant's car were efficient and he admitted that he was driving with his head lights on at a speed of about 25 — 30 miles per hour when his car came into collision with the cyclist. After the accident the appellant, very properly, stopped his car and aided by his passenger, a Mr. Balasingham, picked up the injured man and took him to the General Hospital where, unfortunately, he later died.

In his defence the appellant denied negligence and stated that as his car was about to overtake the cyclist and whilst it was some 10 feet from the car,

the cyclist, without warning, swerved out from the left hand side of the road and, that in the circumstances, he (the appellant) had no time to avoid a collision.

Mr. Balasingham, somewhat surprisingly, was not called by the appellant but an eye witness account of how the accident occurred was given by the watchman of the Singapore Traction Company Bus Depot, who stated that on the evening in question he was standing near the gate of the depot when the deceased passed him on his bicycle. Soon after he had passed the depot gate, added this witness, a car which was travelling fast came up behind the cyclist (who was riding in a straight direction at the time) and ran into his rear mudguard knocking the cyclist off the machine and onto the road. Another witness, named Cheng, who was also cycling that night along Upper Aljunied Road, says that he was passed by the appellant's car which was travelling at more than thirty miles per hour and that soon after it passed him — whilst it was on the crown of the road — he heard its brakes screeching, followed by the sound of a collision. This evidence contributed little to the story as the witness did not see the position of the deceased's cycle before the collision.

The learned trial Judge, having considered the evidence (including a photograph of the deceased's smashed cycle) and the probabilities of the matter found that the deceased must in fact have intended to cross the road in front of the car approaching from behind, but suddenly realising his peril, turned back to his left and was thus riding roughly parallel to the side of the road when the rear of his bicycle was struck by the appellant's car.

Now there is no dispute that the lights and brakes of the appellant's vehicle were efficient and it is admitted that at the scene of the accident the road is nearly 23 feet wide. Further there was no oncoming traffic and even if the learned trial Judge's theory as to the deceased's sudden decision to turn back to the left side of the road is in fact correct, clearly there was ample time, if he was driving carefully, for the appellant either to avoid the collision by turning to his right or by braking. The trial Judge's theory, moreover, is not strengthened by the finding of the cycle and its lamp so close to the left hand verge, neither is it compatible with the evidence of the watchman. Lastly the account given by the appellant as to how the accident occurred is highly suspect since, when giving evidence he abandoned his pleaded defence — namely that the deceased had suddenly swerved into the path of his vehicle.

In our opinion the facts of this case point to the irresistible conclusion that it was the appellant's negligence, or lack of alertness, (possibly influenced by the fact that he had consumed at least three tots of brandy) which caused this accident. He was driving along a wide road with good head lights, on a dry night, and he should certainly have avoided this collision had he been driving with ordinary prudence.

The appeal on the point of negligence is thus dismissed and the respondents will succeed on the cross appeal.

There remains the questions of damages. The appellant contended that the trial Judge had acted on a wrong principle in assessing the damages inasmuch as he had not made allowances for the various contingencies which should be taken into account in a case of this nature; alternatively, if he had taken them into account, his method of allowing for them by taking the life expectancy at 24 years instead of 26 years was incorrect.

The principle to be followed in assessing damages in this kind of case is very clearly stated by Lord Wright in *Davies & Anor. v. Powell Duffryn Associated Collieries Ltd.*[1] (at p. 617) in the following words: "There is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future possibilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt."

At the time of his death the deceased was 41 years of age earning $210 per month and receiving two free meals per day and in addition he earned extra money by hawking in the evenings. In the result, according to the widow's evidence, he was able to pay and did actually pay her $300 per month. The learned Judge evidently thought this figure somewhat exaggerated and said that he felt he would not be doing the widow any great injustice if he held $250 per month to be the amount to be assessed on this score. The learned Judge does not deal specifically with the question of how much of this sum was

applied to the deceased's upkeep and maintenance but it is clear that, even allowing for the fact that the deceased, as part of his earnings received two free meals a day, a substantial sum should be deducted under this head. Taking all these matters into account we estimate the monthly sum which would, if he had lived, have been applied to the upkeep and maintenance of his wife and three children at an average sum of $200 per month. We estimate the sum required to purchase an annuity at the rate of $200 per month, taking the life expectancy at the agreed figure of 26 years, would be in the region of $32,000. This sum must, however, be taxed down, to use Lord Wright's expression, in order to make due allowance for various contingencies such as the possible death of the widow and of the children, the possibility of a falling-off in the earning capacity of the deceased before the end of his expected 26 years of life, the possibility of the widow's re-marriage and the termination of the dependency of the children. Taking all these contingencies into account, we are of the opinion that the total sum recoverable under section 12 of the Civil Law Ordinance should be $22,000. Of this sum we award $15,000 to the widow and $7,000 to the children, of which we allocate $1,000 to the eldest child, $2,000 to the second child and $4,000 to the youngest child. In addition to this we award funeral expenses of $1,000. As to the claim under section 7, we award $3,500 to the estate but as there is an intestacy, this goes to the widow and is overlapped and merged in the $15,000 already awarded to her. The judgment of the learned Judge will therefore be varied by substituting these sums for those awarded in the Court below but the order awarding the respondents the whole of the costs of the action in the Court below will stand. As regards the costs of this appeal, the appellant has failed as regards the issue of liability but he has succeeded in obtaining an important reduction in the amount of damages. In these circumstances we think substantial justice will be done if the appellant is ordered to pay half the respondents' costs of this appeal. The appellant must also pay the costs of the cross appeal.

Thomson C.J. (F.M.) concurred.

Appeal dismissed.

Solicitors: *Braddell Bros.; Christopher & Francis.*

TAN GEOK TEE v. KHO HOCK CHOO (w) & ANOR.

[C. A. (Tan Ah Tah, Rigby and Wee Chong Jin JJ.) January 17, 1958]

[Singapore — Civil Appeal No. 16 of 1957]

Negligence — Collision between a motor car and trishaw — No finding as to contributory negligence — Retrial — Quantum of damages.

This was an appeal from a judgment awarding the sum of $21,475 to the respondents in respect of the death of one Lee Ah Song, a trishaw-rider, whose trishaw was involved in a collision with the appellant's motor car along Geylang Road. In his judgment the learned trial Judge held that the appellant was solely to blame for the accident.

There was a passenger in the trishaw at the time of the collision. According to this passenger the trishaw was proceeding straight down Geylang Road when it was run down from behind by the appellant's car. In his cross-examination he denied that the deceased while riding his trishaw swerved to the right in order to avoid a van which was parked on the near side of the road.

On appeal the submissions of counsel related to: (i) the question whether there was any contributory negligence on the part of the deceased; and (ii) the question of damages.

The Court allowed the appeal to the extent of ordering a retrial limited to the issue as to whether or not the deceased was guilty of any degree of negligence in contributing to the accident and, if so, to what extent the damages awarded should be reduced.

Observations on quantum of damages by the President of the Court of Appeal.

COURT OF APPEAL, appeal against the decision of Knight J.

G. J. Okell for the appellant.

Denis Murphy for the respondent.

Tan Ah Tah J. : — This is an appeal by the defendant from a judgment awarding the sum of $21,475 to the plaintiffs in respect of the death of one Lee Ah Song, a trishaw-rider, whose trishaw was involved in a collision with the defendant's motor car which was being driven by the defendant along Geylang Road. In his judgment the learned trial Judge held that the defendant was solely to blame for the accident.

There was a passenger in the trishaw at the time of the collision. According to this passenger the trishaw was proceeding straight down Geylang Road when it was run down from behind by the defendant's motor car. In his cross-examination he denied that the deceased while riding his trishaw swerved to the right in order to avoid a van which was parked on the near side of the road.